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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/842,680	04/15/1997	AMIRAM STEINBERG	ACIM-102(US)	5493
7590	09/13/2005		EXAMINER	
KELLEY DRYE & WARREN LLP TWO STAMFORD PLAZA 281 TRESSER BOULEVARD STAMFORD, CT 06901-3229			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	08/842,680	STEINBERG, AMIRAM
	<b>Examiner</b> DAVID J. ISABELLA	<b>Art Unit</b> 3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 September 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-58 is/are pending in the application.  
4a) Of the above claim(s) 4-7, 21-34, 38-48 and 50-56 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-3, 8-20, 35-37 and 49 is/are rejected.  
7)  Claim(s) 12-17 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

*, Drawings*

The drawings are objected to because reference characters "10" and "3" have both been used to designate the implant. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Election/Restriction***

Claims 4-7, 21-34, 38-48, 50-56 are withdrawn from further consideration by the examiner. 37 CFR 1.142(b) as being drawn to a non-elected invention and species. Election was made without traverse in Paper No. 10.

Applicant's election without traverse of claims 1-3, 8-20, 35-37 and 49 in Paper No. 10 is acknowledged.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 8-20, 35-37 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite. There is no structural nexus between the interface portion and the A support structure. There is no structure defining an "interface".

Claim 2 is indefinite. Claim 1 fails to positively set forth a structure defining the implant and therefore, there is no support for the "central core".

Claim 3, recitation of "truss-like" is indefinite for failing to positively limit the same.

Claim 9 should recite the implant having a surface defining a bone engaging interface and the interface comprises a plurality of support elements protruding therefrom.

Claim 10 is indefinite. It is not clear what characteristic is being adapted for fit within a bone canal.

Claim 11 is redundant to claim 9.

Claim 12, there is no physical nexus between the cable and the support structure.

Claim 13, there is no physical nexus between the cable, the bridge element and the support structure.

Claim 14, see claim 12 supra.

Claim 15 is indefinite. It is not clear how and by what means asymmetric tension is effected to the cables.

Claim 16 should positively recite the cables as having means for adjustment before, during, and/or after.

Claim 17 fails to further define the structure of claim 14.

Claim 18 should recite that the medication is administered after implantation in the bone.

Claim 19 is indefinite. It is not clear if the medication and the coated material are one and the same.

Claim 20 is indefinite for the improper alternative language. BMP and medication are not equivalent elements.

Claim 35. see rejections to claims 1 and 9 supra.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,8,-11,35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by either of Day (4231120) or Weber (4447915).

Each of Day and Weber disclose an implant comprising an interface portion and a central portion wherein the interface portion is deformable upon insertion into a prepared bone canal.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Day (4261120) or Weber (4447915) as applied to claim 1 above, and further in view of Muller-Lierheim (4828563).

The coating of implant surfaces with growth factors to enhance biocompatibility is taught by Muller-Lieheim. To coat the implant of either of Day or Weber with growth factors for increase tissue compatibility would have been obvious from the teachings of Muller-Lierheim.

Claims 1, 3 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumbleton et al (5181930) in view of Day (4231120).

Dumbleton et al discloses an implant comprising an interface and support core. The support core comprises a plurality of rods. Day teaches the use of an implant having an interface formed with deformable elements for better fixation into the prepared bone. To form the interface of Dumbleton, et al with deformable elements for better fixation to the bone would have been obvious from the teachings of Day.

#### ***Allowable Subject Matter***

Claims, 12-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C112,2nd paragraphs set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
September 7, 2005